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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

TODD BETH et al.,

Plaintiffs and Appellants,

v.

EVERETT C. DOUGHTY III,

Defendant and Respondent.

A123156

**(Sonoma County
Super. Ct. No. SCV-237740)**

Plaintiffs Todd and Lisa Beth appeal a postjudgment award of contractual attorney fees to defendant Everett C. Doughty III, who was found to be the prevailing party in plaintiffs' underlying breach of contract action. (Code Civ. Proc., § 1717.) On September 15, 2009, in an unpublished opinion, this court reversed the judgment in the underlying action on the merits in favor of plaintiffs. (*Beth v. Doughty* (A121729).) Consequently, since defendant is not the prevailing party in the underlying action, the court's postjudgment order awarding defendant attorney fees must also be reversed.

Plaintiffs are entitled to costs on appeal.

SIMONS, J.

We concur.

JONES, P.J.

BRUINIERS, J.